

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

IN RE: BIOMET M2a MAGNUM HIP IMPLANT PRODUCT LIABILITY LITIGATION (MDL 2391) This Document Relates to All Cases)	Cause No. 3:12-MD-2391-RLM-CAN
)	Judge Robert L. Miller, Jr.
)	
)	

CASE MANAGEMENT ORDER NO 2.

**MANAGEMENT OF ATTORNEY-CLIENT
PRIVILEGE & WORK PRODUCT PROTECTION**

I. INTRODUCTION

A. This Court has approved the Seventh Circuit’s Standing Order Relating to the Discovery of Electronically Stored Information, attached as Exhibit A to Case Management Order No. 1, which is intended to better promote the “just, speedy, and inexpensive determination” of this action, pursuant to Federal Rule of Civil Procedure 1. In furtherance of Rule 1 and the Pilot Program initiated by the Seventh Circuit Electronic Discovery Committee, it is hereby ordered as follows:

B. The terms of this Order shall apply automatically to the actions that are currently part of this MDL proceeding and to all other cases that become a part of this proceeding by virtue of being instituted in, removed to or transferred to this Court.

C. The terms of this Order shall supercede paragraphs VIII.B.2.h and i of Case Management Order No. 1 relating to a privilege log protocol.

II. ALTERNATIVE PRIVILEGE LOGGING PROTOCOL

A. **Asserting Privilege or Protection.** A party who withholds or redacts documents on the grounds of attorney-client privilege and/or work product protection shall provide:

1. a listing of such documents in electronic spreadsheet format providing the following objective metadata fields (“objective metadata” does not include substantive content from, or a subjective description of, the document being withheld or redacted):
 - a. the Bates number of the document (if redacted);
 - b. the nature of the privilege asserted (e.g., “attorney-client privilege” or “attorney work product”);

- c. the name(s) of the author(s) of the document, (if known) (to the extent a document is comprised of an email chain, the name of the author on the most recent email in the chain will be identified);
 - d. the name(s) of the recipient(s) of the document, including anyone who was sent the document as a “CC” or a “BCC,” (if known) (to the extent a document is comprised of an email chain, the name(s) of the recipient(s) on the most recent email in the chain will be identified);
 - e. the custodian of the document;
 - f. the document type, including, for example, whether the document is an email, paper file, a meeting presentation, a spreadsheet, or other descriptive identifier of the document type;
 - g. the date the document was created (if known), sent (if applicable); and last modified (if applicable).
2. The withholding/redacting party need not provide an individualized or subjective description of the privilege or protection claimed for documents corresponding to the following categories because the parties agree that the individual review of such categories is not worth the time and/or expense necessary to do so:
- a. Communications involving outside counsel;
 - b. Emails from an attorney and attachments;
 - c. Emails sent to an attorney (attorney in the TO field) and attachments;
 - d. Emails copied to an attorney (attorney in the CC field) and attachments;
 - e. Documents prepared or edited by an attorney (not attached to emails);
 - f. Documents prepared or edited for review by an attorney (not attached to emails);
 - g. Emails between non-lawyers conveying legal advice;
 - h. Documents with reference to legal advice;
 - i. Status of legal matters, legal settlements; and
 - j. Communications with accounting personnel covered by the Indiana accountant-client privilege.

3. The withholding/redacting party shall specify the category to which a privileged or protected document corresponds.
4. The withholding/redacting party shall provide individualized descriptions for documents that it asserts are privileged or protected but that do not correspond to a category listed above.

B. **Challenging Asserted Privilege and Protection.** If a party challenges an assertion of privilege or protection from discovery then the parties shall meet and confer and make a good faith effort to cooperatively classify the challenged documents into categories that are subject to common factual and legal issues in so far as practicable. Thereafter, the parties shall jointly request a conference with the Court to devise a plan for resolving the challenges, which normally will include:

1. a schedule for briefing the legal issues relevant to each category;
2. a ruling date for issues that can be resolved on the briefs alone; and
3. a schedule for providing representative samples for the Court's review in camera with respect to any categories that cannot be resolved on the briefs; and
4. a schedule for the parties to meet and confer to attempt in good faith to apply the Court's rulings on the samples to whole categories or within categories insofar as possible; and
5. a schedule for repeating this process as needed.

IT IS SO ORDERED.

ENTERED: September 9, 2013

Robert L. Miller, Jr.

Robert L. Miller, Jr.
Judge, United States District Court